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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91209509
Party	Defendant Banded Brands, LLC
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Date	05/08/2013
Attachments	Angry_bird_Answer.pdf(90400 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of U.S. Trademark Application Serial No.: 85/538,553  
Published in the *Official Gazette* on January 29, 2013  
Mark: ANGRY BIRD

ROVIO ENTERTAINMENT, LTD.	)	
	)	
Opposer,	)	
	)	OPPOSITION NO. 91209509
v.	)	
BANDED BRANDS, LLC	)	
	)	
Applicant.	)	

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**ANSWER TO NOTICE OF OPPOSITION**

BANDED BRANDS, LLC, a Nevada limited liability company (“Applicant”), by and through the undersigned counsel, hereby answers the Notice of Opposition (“Opposition”) of Rovio Entertainment, Ltd., a Finnish limited liability company (“Rovio”), in the above-captioned matter as follows:

1. Applicant admits the allegations of Paragraph 1 of the Opposition.
2. Applicant admits the allegations of Paragraph 1 of the Opposition. Applicant further alleges that Rovio’s consent or permission is not required to use the applied-for ANGRY BIRD mark.
3. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 3 of the Opposition. Therefore, Applicant denies the allegations in Paragraph 3 of the Opposition.

4. Applicant admits that Exhibit A purports to show an internet webpage and Exhibit B purports to show a press release. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations of Paragraph 4 of the Opposition. Therefore, Applicant denies the remaining allegations in Paragraph 4 of the Opposition.

5. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 5 of the Opposition. Therefore, Applicant denies the allegations in Paragraph 5 of the Opposition.

6. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 6 of the Opposition. Therefore, Applicant denies the allegations in Paragraph 6 of the Opposition.

7. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 7 of the Opposition. Therefore, Applicant denies the allegations in Paragraph 7 of the Opposition.

8. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 8 of the Opposition. Therefore, Applicant denies the allegations in Paragraph 8 of the Opposition.

9. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 9 of the Opposition. Therefore, Applicant denies the allegations in Paragraph 9 of the Opposition.

10. Applicant admits the allegations of Paragraph 10 of the Opposition and that Exhibit C purports to show copies of Rovio's trademark registrations.

11. Applicant admits that Rovio has filed an application with the United States Patent and Trademark Office for ANGRY, represented by Serial No. 85/689,262, and that Exhibit D

purports to be a copy of that Application. The first sentence of Paragraph 11, relative to Roivo's allegation that it owns the application represented by Serial No. 85/689,262, represents a legal conclusion rather than a factual allegation and is therefore denied.

12. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 12 of the Opposition. Therefore, Applicant denies the allegations in Paragraph 12 of the Opposition.

13. The statements in Paragraph 13 of the Opposition represent legal conclusions rather than factual allegations. Therefore, Applicant denies the statements in Paragraph 13 of the Opposition.

14. Applicant admits that it uses the ANGRY BIRD mark in connection with "Hunting game calls" in International Class 28. Applicant denies the remaining statements in Paragraph 14 of the Opposition.

15. Applicant denies the statements in Paragraph 15 of the Opposition.

16. Applicant denies the statements in Paragraph 16 of the Opposition.

17. Applicant admits its first use in commerce was 2012. The remaining statements in Paragraph 17 of the Opposition represent legal conclusions rather than factual allegations. Therefore, Applicant denies the remaining statements in Paragraph 17 of the Opposition.

18. Applicant denies the statements in Paragraph 18 of the Opposition.

19. The statements in Paragraph 19 of the Opposition represent legal conclusions rather than factual allegations. Therefore, Applicant denies the statements in Paragraph 19 of the Opposition.

20. The statements in Paragraph 20 of the Opposition represent legal conclusions rather than factual allegations. Therefore, Applicant denies the statements in Paragraph 20 of the Opposition.

21. The statements in Paragraph 21 of the Opposition represent legal conclusions rather than factual allegations. Therefore, Applicant denies the statements in Paragraph 21 of the Opposition.

### **AFFIRMATIVE DEFENSES**

#### **NO LIKELIHOOD OF CONFUSION**

22. Rovio's application for ANGRY (Serial No. 85/689,262) does not represent a right to monopolize the word "angry" in view of the fact that (a) no specimen showing use of the ANGRY mark has been filed, and (b) the USPTO Examining Attorney has twice denied acceptance of the ANGRY mark due to Rovio's improper classification and identification of goods covered by the ANGRY mark. Rovio has yet to satisfactorily respond to the Examining Attorney's final requirements in that regard.

23. The Examining Attorney, when presented with a Letter of Protest Memorandum relative to a potential likelihood of confusion between Rovio's marks and Applicant's mark, found that no such likelihood of confusion existed and allowed Applicant's ANGRY BIRD mark to proceed with registration.

24. There is no likelihood of confusion between any of Rovio's ANGRY BIRDS marks and Applicant's ANGRY BIRD mark. Specifically, Applicant's use of the ANGRY BIRD mark with respect to Applicant's duck hunting calls is substantially different than Rovio's use of the ANGRY BIRDS marks in conjunction with the goods covered by those marks. In view of the fact that Applicant's ANGRY BIRD is limited solely to hunting calls, an industry not

covered by any Roivo ANGRY BIRDS mark, there is no likelihood of consumer confusion and Applicant's ANGRY BIRD mark is entitled to registration.

#### NO DILUTION

25. Rovio has not established the level of fame required to assert a likelihood of dilution as grounds for opposing Applicant's registration of ANGRY VOTERS.

26. Even if Rovio could establish the level of fame required to support a likelihood of dilution, Roivio has not established a likelihood of blurring of ANGRY BIRDS by Applicant's ANGRY BIRD mark which would be clearly distinguishable by reasonable consumers for the respective marks.

27. Even if Rovio could establish the level of fame required to support a likelihood of dilution, Roivio has not established a likelihood of tarnishment of ANGRY BIRDS by Applicant's ANGRY BIRD mark is marketed to consumers of duck hunting calls.

28. In view of the fact that Applicant's ANGRY BIRD mark is not likely to dilute any Roivo ANGRY BIRDS marks, Applicant's ANGRY BIRD mark is entitled to registration.

WHEREFORE, Applicant, by and through its attorneys, respectfully requests that Rovio's Opposition be denied and that the application filed by Applicant be allowed to register.

Dated this 8<sup>th</sup> day of May, 2013.

BANDED BRANDS, LLC, Applicant

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ATTORNEYS FOR APPLICANT

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing Answer was served by via United States mail, postage prepaid, this 8<sup>th</sup> day of May, 2013, to:

J. Michael Keyes  
Whitney J. Baran  
618 W. Riverside Avenue, Suite 300  
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Attorneys for Opposer Rovio Entertainment, Ltd.

By: /Daniel J. Waters/  
Daniel J. Waters